UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Ex parte BRUCE A. BEADLE; MICHAEL WAYNE BROWN; RANDOLPH MICHAEL FORLENZA; DOUGLAS SCOTT ROTHERT; AND MIGUEL SANG

Appeal No. 2005-1828
Application No. 09/584,808

ON BRIEF

Before KRASS, CRAWFORD, and GROSS, Administrative Patent Judges.

CRAWFORD, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 1 to 8, 10 to 20 and 22 to 28, which are all of the claims pending in this application. Claims 9, 21 and 29 are allowed.

We reverse.

BACKGROUND

The appellants' invention relates to a method, system, and program product for improving a client's communication performance within a network by automatically selecting a best performing network route for the client communication (specification, p. 1). A copy of the claims under appeal is set forth in the appendix to the appellants' brief.

The Prior Art References

The prior art references of record relied upon by the examiner in rejecting the appealed claims are:

Brendel et al. (Brendel)	5,774,660	Jun. 30, 1998
Rosin et al. (Rosin)	6,397,387	May 28, 2002 (filed Jun. 2, 1997)

The Rejections

Claims 1 to 8, 10 to 20 and 22 to 28 stand rejected under 35 U.S.C. § 103 as being unpatentable over Brendel in view of Rosin.[1]

Rather than reiterate the conflicting viewpoints advanced by the examiner and the appellants regarding the above-noted rejections, we make reference to the answer (mailed September 28, 2004) for the examiner's complete reasoning in support of the

[1] The examiner includes claim 9 in the statement of the rejection. However, the examiner does not include an explanation of the rejection in regard to claim 9. In addition, claim 9 is also listed as an allowed claim. Therefore, we assume that claim 9 is not rejected under 35 U.S.C. § 103 but rather is allowed.

rejections, and to the brief (filed May 28, 2004) and reply brief (filed November 29, 2004) for the appellants' arguments thereagainst.

OPINION

In reaching our decision in this appeal, we have given careful consideration to the appellants' specification and claims, to the applied prior art references, and to the respective positions articulated by the appellants and the examiner. As a consequence of our review, we make the determinations which follow.

The appellants' invention is a method for providing a client with a connection to a network. The method first selects a client connection type. This selection is made from (1) a plurality of independent servers, (2) a plurality of media for connection such as DSL, wireless modem etc. and (3) a server/medium connection (specification at page 16 and 18). An alternate connection type is determined when it is determined to be more optimal than the selected connection type (specification at page 18).

The examiner has rejected all the claims under 35 U.S.C. § 103 as being unpatentable over Brendel in view of Rosin. In the examiner's view, Brendel describes a method including the steps of selecting a connection type and in response to a receipt of a connection request, dynamically connecting said client to a selected server of said network based on a determination of an effective route for completing said

connection request, given said selected connection type. The examiner relies on Rosin for teaching the balance of recitations in claim 1 and concludes:

> . . . it would have been obvious to one of ordinary skill in the art to incorporate the teaching of Rosin into the teaching of Brendel in order to determine the most efficient delivery of data through all available bandwidth connections, thus maximizing the available bandwidth capacities to provide a more coordinated and faster internet experience [answer at page 5].

We find that Brendel describes a method in which a client connecting to the internet connects to content servers of a website through a load balancer (col. 10, lines 38 to 53). The load balancer connects the client to a server after determining which content server should service the request of the client (col. 10, lines 58 to 59).

We find that Rosin describes an internet on demand system for television in which a client television can connect to one server using various connecting mediums (Abstract). Rosin does not describe selecting a connection type which includes selecting from a plurality of network servers.

The appellants argue that Brendel does not describe selecting a network connection type. Rather, appellants argue, Brendel describes selecting a universal resource locator (URL) by which to initiate a session with a content server.

The examiner argues that appellants' claimed subject matter is not limited to network servers but when the term is given its broadest reasonable interpretation includes content servers as well.

We do not agree. While it is true that in proceedings before the PTO, claims in an application are to be given their broadest reasonable interpretation, that interpretation must be read in light of the specification. In re Sneed, 710 F.2d 1544, 1548, 218 USPQ 385, 388 (Fed. Cir. 1983).

The specification is clear that the server to which the invention is directed is a network server not a content server (specification at pages 11 and 15; Figure 5A). In addition, claim 1 is directed to a method for providing a client with connection to a "network" and also recites the step of "connecting said client to a selected server of said network."

Therefore, the connection of the client to a content server can not be considered selecting a connection type within the meaning of claim 1.

In addition, if the step of connecting from the load balancer of Brendel to the various content servers were considered selecting a connection type, the last paragraph of claim 1 related to dynamically connecting a client to a server would not make sense because the client at that time would already be connected to a server.

As we have determined that neither Brendel nor Rosin describes the step of selecting a connection type, as required by claim 1, we will not sustain the examiner's rejection or claim 1 over Brendel in view of Rosin. We will likewise not sustain this rejection as it is directed to claims 2 through 8 as these claims depend from claim 1.

Claim 10 is directed to a computer program for connecting a client to servers of a network in which the user is connected to a network server based on a connection request from the user. Therefore, we will not sustain this rejection because as we stated above Brendel does not describe a program that connects clients to network servers but rather to content servers. We will likewise not sustain this rejection as it is directed to claims 11 to 12 as these claims are dependent on claim 10.

Claim 13 recites a system for providing a client with connection to a network that includes a means for selecting at the client, a connection type. We will not sustain this rejection for the same reasons discussed above for claim 1. We will also not sustain this rejection as it is directed to claims 14 to 19 and 20 and 21 as these claims are dependent on claim 13.

Claim 22 recites a computer program for providing a client with a connection to a network, which includes a medium for enabling a client selection of a connection type. We will not sustain the rejection as it is directed to claim 22 for the same reasons discussed above for claim 1. We will likewise not sustain the rejection as it is directed to claims 23 to 28 as these claims depend from claim 22.

The decision of the examiner is reversed.

REVERSED

ERROL A. KRASS
Administrative Patent Judge

MURRIEL E. CRAWFORD
Administrative Patent Judge

ANITA PELLMAN GROSS
Administrative Patent Judge

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